

MAY 08 2002 LF

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Michael N. Milby, Clerk

In re ENRON CORPORATION SECURITIES §
LITIGATION §

----- §
This Document Relates To: §

MARK NEWBY, et al., Individually and On §
Behalf of All Others Similarly Situated, §

Plaintiffs, §

vs. §

ENRON CORP., et al. §

Defendants. §

Civil Action No. H-01-3624
(Consolidated)

**DEFENDANT BARCLAYS PLC'S MOTION TO DISMISS
THE CONSOLIDATED COMPLAINT**

Under Rules 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure and the Private Securities Litigation Reform Act, 15 U.S.C. § 78u-4, Barclays PLC ("Barclays") moves the Court for an Order dismissing the Consolidated Complaint (the "Complaint") as against defendant Barclays with prejudice.

As set forth more fully in the Memorandum of Law in Support of Defendant Barclays PLC's Motion to Dismiss accompanying this motion, the Court should dismiss the Complaint against Barclays on the following grounds:

1. The Complaint fails to state a claim under Section 10(b) of the Securities Act because it does not identify even a single public statement -- not an analyst report, prospectus, or registration statement -- much less a material misstatement, made by, attributed to, or even reviewed by Barclays;
2. The Complaint fails to state a claim under Section 20(a) of the Securities Act because there is no allegation in the Complaint that Barclays controls an entity that is primarily liable under the 1934 Act;

652

3. Because plaintiffs do not allege that Barclays made any actionable misstatements, their claim rests entirely on the allegation that Barclays aided and abetted alleged violations by Enron Corporation ("Enron"). Under the Supreme Court's decision in *Central Bank of Denver v. First Interstate Bank of Denver*, 511 U.S. 164 (1994), however, no such cause of action exists; and
4. The Complaint fails to plead specific facts giving rise to a strong inference of scienter. Plaintiffs have not plead any alleged act by Barclays to which the required state of mind could attach. Moreover, there is no specific allegation in the Complaint from which to infer that Barclays had any knowledge whatsoever of Enron's allegedly fraudulent accounting practices.

Accordingly, Barclays respectfully requests that the Court dismiss the Complaint against it with prejudice.

Dated: May 8, 2002

Respectfully submitted,

Of Counsel:

David H. Braff
Anthony M. Candido
Adam R. Brebner
(*Pro hac vice* motions pending)
SULLIVAN & CROMWELL
125 Broad Street
New York, NY 10004
Telephone: (212) 558-4000
Facsimile: (212) 558-3588



Barry Abrams
State Bar No. 00822700
Southern District I.D. No. 2138
ABRAMS SCOTT & BICKLEY, LLP
Chase Tower, 600 Travis, Suite 6601
Houston, Texas 77002
Telephone: (713) 228-6601
Facsimile: (713) 228-6605

Attorneys for Defendant Barclays PLC

CERTIFICATE OF SERVICE

I certify that I caused true and complete copies of the foregoing Defendant Barclays PLC's Motion to Dismiss the Consolidated Complaint and the accompanying (i) Defendant Barclays PLC's Memorandum of Law in Support of Its Motion to Dismiss the Complaint, and (ii) [Proposed] Order Granting Barclays' Motion to Dismiss the Complaint, to be served on this 8th day of May, 2002, as follows:

Upon counsel for the following parties via facsimile and e-mail:

Linda L. Addison
FULBRIGHT & JAWORSKI LLP
1301 McKinney, Suite 5100
Houston, Texas 77010-3095
Phone: (713) 651-5628
Fax: (713) 651-5246
Email: laddison@fulbright.com
*Attorney for The Northern
Trust Company and Northern Trust
Retirement Consulting LLC*

Steve W. Berman
HAGENS BERMAN, LLP
1301 Fifth Avenue, Suite 2900
Seattle, Washington 98101
Phone: (206) 623-7292
Fax: (206) 623-0594
Email: steve@hagens-berman.com
Co-Lead counsel for the Tittle plaintiffs

Robert Hayden Burns
BURNS WOOLEY & MARSEGLIA
1111 Bagby, Suite 4900
Houston, Texas 77002
Phone: (713) 651-0422
Fax: (713) 751-0817
Email: hburns@bwmzlaw.com
Attorneys for Defendant Kristina Mordaunt

James E. Coleman, Jr.
CARRINGTON, COLEMAN, SLOMAN &
BLUMENTHAL, LLP
200 Crescent Court, Suite 1500
Dallas, Texas 75201
Phone: (214) 855-3000
Fax: (214) 855-1333
Email: deakin@ccsb.com
Attorney for Kenneth Lay

Jeremy L. Doyle
GIBBS & BRUNS, L.L.P.
1100 Louisiana, Suite 5300
Houston, Texas 77002
Phone: (713) 650-8805
Fax: (713) 750-0902
Email: jdoyle@gibbs-bruns.com
*Attorney for Robert Belfer,
Norman Blake, Ronnie Chan,
John Duncan, Joe Foy,
Wendy Gramm, Robert Jaedicke,
Charles LeMaistre, John Mendelsohn,
Jerome Meyer, Paulo Ferraz Pereira,
Frank Savage, Charls Walker,
John Wakeham, Herbert Winokur*

Anthony C. Epstein
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, N.W,
Washington, D.C. 20036
Phone: (202) 429-8065
Fax: (202) 261-7507
Email: aepstein@steptoe.com
*Attorney for Philip J. Bazelides,
Mary K. Joyce and James S. Prentice*

G. Sean Jez
FLEMING & ASSOCIATES
1330 Post Oak Blvd., Suite 3030
Houston, TX 77056
Phone: (713) 621-7944
Fax: (713) 621-9638
Email: terri_raybourn@fleming-law.com
enron@fleming-law.com
Attorney for Individual Plaintiffs

Barry G. Flynn
LAW OFFICES OF BARRY G. FYNN, P.C.
1300 Post Oak Blvd., Suite 750
Houston, Texas 77056
Phone: (713) 840-7474
Fax: (713) 840-0311
Email: bgflaw@mywavenet.com
Attorney for David Duncan

Mark A. Glasser
KING & SPALDING
1100 Louisiana, Suite 4000
Houston, Texas 77002
Phone: (713) 751-3200
Fax: (713) 751-3290
Email: mkglasser@kslaw.com
Attorney for LJM II Co-Investment

H. Bruce Golden
GOLDEN & OWENS, LLP
1221 McKinney Street, Suite 3600
Houston, Texas 77010
Phone: (713) 223-2600
Fax: (713) 223-5002
Email: golden@goldenowens.com
Attorney for John A. Urquhart

Roger B. Greenberg
SCHWARTZ, JUNELL, CAMPBELL &
OATHOUT
2000 Two Houston Center
909 Fannin
Houston, Texas 77010
Phone: (733) 752-0017
Fax: (713) 752-0327
Email: rgreenberg@schwartz-junell.com
*Attorney for the Regents of the
University of California*

Mark C. Hansen
Reid M. Figel
KELLOGG, HUBER HANSEN, TODD &
EVANS PLLC
1615 M. Street, N.W., Suite 400
Washington, DC 20036
Phone: (202) 326-7900
Fax: (202) 326-7999
Email: mhansen@khhte.com
rfigel@khhte.com
Attorney for Defendant Nancy Temple

Rusty Hardin
RUSTY HARDIN & ASSOCIATES, P.C
1201 Louisiana, Suite 3300
Houston, Texas 77002
Phone: (713) 652-9000
Fax: (713) 652-9800
Email: rhardin@rustyhardin.com
aramzel@rustyhardin.com
*Attorneys for Arthur Andersen LLP, C.E.
Andrews, Dorsey L. Baskin, Michael L. Bennett,
Joseph F. Berardino, Donald Dreyfus, James A.
Friedlieb, Gary B. Goolsby, Gregory W. Hale,
Gregory J. Jonas, Robert G. Kutsenda, Benjamin
S. Neuhausen, Richard R. Petersen, Danny D.
Rudloff, Steve M. Samek, John E. Sorrells, John
E. Stewart and William E. Swanson*

Robin Harrison
CAMPBELL, HARRISON & WRIGHT LLP
4000 Two Houston Center
909 Fannin Street
Houston, Texas 77010
Phone: (713) 752-2332
Fax: (713) 752-2330
Email: rharrison@chd-law.com
Liaison counsel for the Tittle plaintiffs

Sharon Katz
DAVIS POLK & WARDWELL
450 Lexington Avenue
New York, NY 10017
Phone: (212) 450-4000
Fax: (212) 450-3633
Email: andersen.courtpapers@dpw.com
Attorneys for Arthur Andersen LLP, C.E. Andrews, Dorsey L. Baskin, Michael L. Bennett, Joseph F. Berardino, Donald Dreyfus, James A. Friedlieb, Gary B. Goolsby, Gregory W. Hale, Gregory J. Jonas, Robert G. Kutsenda, Benjamin S. Neuhausen, Richard R. Petersen, Danny D. Rudloff, Steve M. Samek, John E. Sorrells, John E. Stewart and William E. Swanson

Charles G. King
KING & PENNINGTON, LLP
711 Louisiana Street, Suite 3100
Houston, TX 77002
Phone: (713) 225-8404
Fax: (713) 225-8488
Email: cking@kandplaw.com
Attorney for Goldman Sachs, Salomon Smith Barney, Banc of America Securities

Jeffrey C. King
HUGHES & LUCRE, L.L.P.
1717 Main Street, Suite 2800
Dallas, TX 75201
Phone: (214) 939-5900
Fax: (214) 939-6100
Email: kingj@hughesluce.com
Attorney for Bruce Willison

Benard V. Preziosi, Jr.
CURTIS, MALLET-PREVOST, COLT & MOSLE, LLP
101 Park Avenue
New York, NY 10178-0061
Phone: (212) 696-6000
Fax: (212) 697-1559
Email: bpreziosi@cm-p.com
Attorney for Defendant Michael C. Odom

William S. Lerach
G. Paul Howes
Helen J. Hodges
MILBERG WEISS BERSHAD HYNES & LERACH LLP
410 B. Street, Suite 1700
San Diego, CA 92101-3356
Phone: (619) 231-1058
Fax: (619) 231-7423
Email: enron@milberg.com
Attorneys for the Regents of the University of California and Lead Counsel for the Newby Plaintiffs

Kenneth S. Marks
SUSMAN GODFREY, L.L.P.
1000 Louisiana, Suite 5100
Houston, TX 77002
Phone: (713) 651-9366
Fax: (713) 654-6666
Email: kmarks@susmangodfrey.com
Attorney for Enron Corporation

James Marshall
2540 Huntington Drive, Suite 201
San Marino, CA. 91108-2601
Phone: (626) 287-4540
Fax: (626) 237-2003
Email: marshall@attglobal.net
Attorney for Wilt Plaintiffs

Andrew J. Mytelka
David Le Blanc
GREER, HERZ & ADAMS, L.L.P.
One Moody Plaza, 18th Fl.
Galveston, TX 77550
Phone: (409) 797-3200
Fax: (409) 766-6424
Email: dleblanc@greerherz.com
bnew@greerherz.com
amytelka@greerherz.com
swindsor@greerherz.com
Attorney for American National Plaintiffs

William F. Martson, Jr.
TONKON TORP LLP
1600 Pioneer Tower
888 SW Fifth Avenue
Portland, OR 97204
Phone: (503) 802-2005
Fax: (503) 972-3705
Email: rick@tonkon.com
Attorney for Ken L. Harrison

John L. Murchison, Jr.
VINSON & ELKINS, L.L.P.
2300 First City Tower, 1001 Fannin
Houston, TX 77002
Phone: (713) 758-2222
Fax: (713) 758-2346
Email: jmurchison@velaw.com

John J. McKetta, III
GRAVES, DOUGHERTY, HEARON &
MOODY, P.C.
515 Congress Avenue, Suite 2300
Austin, Texas 78701
Phone: (512) 480-5600
Fax: (512) 478-1976
Email: mmcketta@gdhm.com
Attorney for Rebecca Mark-Jusbasche

Eric J.R. Nichols
BECK, REDDEN & SECREST
1221 McKinney, Suite 4500
Houston, Texas 77010-2010
Phone: (713) 951-3700
Fax: (713) 951-3720
Email: enichols@brsfirmcom
*Attorney for Michael J. Kopper,
Chewco Investments, L.P. and
LJM Cayman, L.P.*

Jacks C. Nickens
NICKENS, LAWLESS & FLACK, LLP
1000 Louisiana, Suite 5360
Houston, Texas 77002
Phone: (713) 571-9191
Fax: (713) 571-9652
Email: trichardson@nlf-law.com
*Attorney for The Estate of J. Clifford
Baxter, Deceased, Richard B. Buy,
Richard A. Causey, Mark A. Frevert,
Joseph M. Hirko, Stanley C. Horton,
Steven J. Kean, Mark E. Koenig,
Michael S. McConnell, Jeffrey McMahon,
J. Mark Metts, Cindy K. Olson,
Lou L. Pai, Kenneth D. Rice,
Joseph W. Sutton and Paula Ricker*

Gary A. Orseck
ROBBINS, RUSSELL, ENGLERT
ORSECK &
UNTEREINER LLP
1801 K. Street, N.W., Suite 411
Washington, DC 20006
Phone: (202) 775-4500
Fax: (202) 775-4510
Email: gorseck@robbinsrussell.com
Attorney for Defendant Michael Lowther

Lynn Lincoln Sarko
KELLER ROHRBACK LLP
1201 Third Avenue, Suite 3200
Seattle, WA 98101-3052
Phone: (206) 623-1900
Fax: (206) 623-3384
Email: lsarko@kellerrohrback.com
Co-lead counsel for the Tittle plaintiffs

Scott B. Schreiber
ARNOLD & PORTER
555 Twelfth Street, N.W.
Washington, DC 20004-1206
Phone: (202) 942-5000
Fax: (202) 942-5999
Email: scott_schreiber@aporter.com
enroncourtpapers@aporter.com
Attorney for Defendant Thomas Bauer

Henry F. Schuelke, III
Robert Sutton
JANIS, SCHUELKE & WECHSLER
1728 Massachusetts Ave., N.W.
Washington, DC 20036
Phone: (202) 861-0600
Fax: (202) 223-7230
Email: hsschuelke@janisschuelke.com
rsutton@janisschuelke.com
Attorneys for Defendant Ben Glisan

Billy Shepherd
CRUSE, SCOTT, HENDERSON & ALLEN,
LLP
600 Travis Street, Suite 3900
Houston, TX 77002-2910
Phone: (713) 650-6600
Fax: (713) 650-1720
Email: bshepherd@crusescott.com
*Attorney for D. Stephen Goddard, Jr., Debra A.
Cash and Michael M. Lowther*

Craig Smyser
SMYSER KAPLAN & VESELKA, LLP
2300 Bank of America Center
700 Louisiana
Houston, Texas 77002
Phone: (713) 221-2330
Fax: (713) 221-2320
Email: enronservice@skv.com
Attorney for Andrew Fastow

Robert M. Stern
O'MELVENY & MYERS, LLP
555 13th Street, NW, Suite 500W
Washington, DC 20004
Phone: (202) 383-5328
Fax: (202) 383-5414
Email: rstern@omm.com
Attorney for Jeffrey K. Skilling

Abigail Sullivan
BRACEWELL & PATTERSON LLP
711 Louisiana, Suite 2900
Houston, Texas 77002-2781
Phone: (713) 221-1205
Fax: (713) 221-2149
Email: asullivan@bracepatt.com
Attorney for James V. Derrick

John Villa
WILLIAMS & CONNOLLY, L.L.P.
725 Twelfth Street, NW
Washington, D.C. 20005
Phone: (202) 434-5000
Fax: (202) 434-5705
Email: jvilla@wc.com
*Attorney for Vinson & Elkins, L.L.P.,
Ronald T. Astin, Joseph Dilg,
Michael P. Finch and Max Hendrick III*

Paul Vizcarrondo, Jr.
WACHTELL, LIPTON, ROSEN KATZ
51 West 52nd Street
New York, NY 10019
Phone: (212) 403-1000
Fax: (212) 403-2000
Email: pvizcarrondo@wlrk.com
*Attorney for Goldman Sachs,
Salomon Smith Barney, Banc of
America Securities*

Gregory A. Markel
BROBECK, PHLEGER & HARRISON LLP
1633 Broadway, 47th Floor
New York, NY 10019
Phone: (212) 581-1600
Fax: (212) 586-7878
Email: gmarkel@brobeck.com
rsetton@brobeck.com
nruskin@brobeck.com
*Attorneys for Defendant
Bank of America Corp.*

Paul Bessette
BROBECK, PHLEGER & HARRISON LLP
4801 Plaza on the Lake
Austin, TX 78746
Phone: (512) 330-4000
Fax: (512) 330-4001
Email: pbessette@brobeck.com
*Attorneys for Defendant
Bank of America Corp.*

Charles G. King
KING & PENNINGTON LLP
711 Louisiana Street, Suite 3100
Houston, TX 77002-2734
Phone: (713) 225-8400
Fax: (713) 225-8488
Email: cking@kandplaw.com
*Attorneys for Defendant
Bank of America Corp.*

Michael D. Warden
SIDLEY AUSTIN BROWN & WOOD,
L.L.P.
1501 K Street, N.W.
Washington, D.C. 20005
Phone: (202) 736-8000
Fax: (202) 736-8711
Email: mwarden@sidley.com
*Attorneys for Defendant
David Stephen Goddard, Jr.*

Mitchell A. Karlan
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, NY 10166-0193
Phone: (212) 351-4000
Fax: (212) 351-4035
Email: mkarlan@gibsondunn.com
mking@gibsondunn.com
rserio@gibsondunn.com
*Attorneys for Defendant
Merrill Lynch & Co., Inc.*

Kevin S. Allred
MUNGER, TOLLES & OLSON
355 South Grand Avenue, 35th Floor
Los Angeles, CA 90071
Phone: (213) 683-9100
Fax: (213) 687-3702
Email: allredks@mto.com
spiegeljw@mto.com
Attorneys for Defendant Kirkland & Ellis

Herbert Washer
CLIFFORD CHANCE ROGERS &
WELLS
200 Park Avenue
Phone: (212) 878-8000
Fax: (212) 878-8375
Email: herbert.washer@cliffordchance.com
james.miler@cliffordchance.com
*Attorneys for Defendant
Merrill Lynch & Co., Inc.*

Taylor M. Hicks
HICKS, THOMAS & LILIENSTERN LLP
700 Louisiana, Suite 1700
Houston, TX 77002
Phone: (713) 547-9100
Fax: (713) 541-9150
Email: thicks@hicks-thomas.com
sloftin@hicks-thomas.com
*Attorneys for Defendant
Merrill Lynch & Co., Inc.*

Upon counsel for the following parties via facsimile and U.S. mail:

Carolyn S. Schwartz
United States Trustee, Region 2
33 Whitehall Street, Twenty-first Floor
New York, NY 10004
Phone: (212) 510-0500
Fax: (212) 668-2255

William Edward Matthews
GARDERE WYNNE SEWELL LLP
1000 Louisiana Suite 3400
Houston, TX 77002
Phone: (713) 276-5500
Fax: (713) 276-5555
*Attorneys for Defendant
Andersen Worldwide, S.C.*

Upon counsel for the following parties via e-mail and U.S. mail:

Brad S. Karp
PAUL, WEISS, RIFKIND, WHARTON
& GARRISON
1285 Avenue of the Americas
New York, NY 10019
Phone: (212) 373-3000
Fax: (212) 757-3990
Email: grp-citi-service@paulweiss.com
Attorneys for Defendant CitiGroup, Inc.

Richard W. Clary
CRAVATH, SWAINE & MOORE
Worldwide Plaza
New York, NY 10019
Phone: (212) 474-1000
Fax: (212) 474-3700
Email: rclary@cravath.com
jnorth@cravath.com
kdemasi@cravath.com
*Attorneys for Defendant
Credit Suisse First Boston Corp.*

George W. Bramblett, Jr.
HAYNES AND BOONE LLP
901 Main Street, Suite 3100
Dallas, TX 75202
Phone: (214) 651-5574
Fax: (214) 200-0374
Email: brambleg@haynesboone.com
*Attorneys for Defendant
Credit Suisse First Boston Corp.*

Lawrence Byrne
WHITE & CASE LLP
1155 Avenue of the Americas
New York, NY 10036
Phone: (212) 819-8200
Fax: (212) 354-8113
Email: lbyrne@whitecase.com
opell@whitecase.com
lcroffoot-suede@whitecase.com
tpfeifere@whitecase.com
Attorneys for Defendant Deutsche Bank AG

Alan N. Salpeter
MAYER, BROWN, ROW & MAW
190 South LaSalle Street
Chicago, IL 60603
Phone: (312) 782-0600
Fax: (312) 706-8680
Email: asalpeter@mayerbrown.com
modorizzi@mayerbrown.com
mmclaughlin@mayerbrown.com
Attorneys for Defendant
Canadian Imperial Bank of Commerce

Bruce D. Angiolillo
SIMPSON, THACHER & BARTLETT
425 Lexington Avenue
New York, NY 10017
Phone: (212) 455-2000
Fax: (212) 455-2502
Email: bangiolillo@stblaw.com
trice@stblaw.com
dwill@stblaw.com
jyoungwood@stblaw.com
jroesser@stblaw.com
Attorneys for Defendant
J.P. Morgan Chase & Co.

Joel M. Androphy
BERG & ANDROPHY
3704 Travis
Houston, TX 77002-9550
Phone: (713) 529-5622
Fax: (713) 529-3785
Email: androphy@bahou.com
Attorney for Defendant
Deutsche Bank AG

Chuck A. Gall
JENKENS & GILCHRIST
1445 Ross Avenue, Suite 3200
Dallas, Texas 75202-2799
Phone: (214) 855-4388
Fax: (214) 855-4300
Email: cgall@jenkens.com
jbowen@jenkens.com
Attorneys for Defendant
J.P. Morgan Chase & Co.

Richard W. Mithoff
MITHOFF & JACKS
One Allen Center, Penthouse
500 Dallas
Houston, TX 77002
Phone: (713) 654-1122
Fax: (713) 739-8085
Email: enronlitigation@mithoff-jacks.com
Attorneys for Defendant
J.P. Morgan Chase & Co.

Robert C. Micheletto
JONES, DAY, REAVIS & POGUE
222 East 41st Street
New York, NY 10017-6702
Phone: (212) 326-3939
Fax: (212) 755-7306
Email: rmicheletto@jonesday.com
dlcarden@jonesday.com
hrwhiting@jonesday.com
btroyer@jonesday.com
Attorneys for Defendant
Lehman Brothers

Upon the following party via U.S. mail:

Dr. Bonnee Linden, Pro Se
LINDEN COLLINS ASSOCIATES
1226 West Broadway, P.O. Box 114
Hewlett, New York 11557

Upon the following parties via overnight courier:

Roman W. McAlindan
THE SHARROW
34 Lickey Square
Barnt Green, Rednal
Birmingham, B45 8HB
Great Britian

Roger D. Willard
3723 Maroneal Street
Houton, TX 77025

Kevin P. Hannon
251 Hedwig Road
Houston, TX 77024

Lawrence Greg Whalley
5 Carsey Lane
Houston, TX 77024

Philip A. Randall
ANDERSEN UNITED KINGDOM
180 Strand
London WC2R 1BL
England
Phone: 44-20-7438-3000
Fax: 44-20-7831-1133

Michael D. Jones
ANDERSEN UNITED KINGDOM
180 Strand
London WC2R 1BL
England
Phone: 44-20-7438-3000
Fax: 44-20-7831-1133

ARTHUR ANDERSEN LLP (Andersen-
Caymen Islands)
33 W. Monroe Street
Chicago, IL 60603

ARTHUR ANDERSEN (Andersen-United
Kingdom)
33 W. Monroe Street
Chicago, IL 60603

ANDERSEN CO. (Andersen-India)
33 W. Monroe Street
Chicago, IL 60603

ARTHUR ANDERSEN-Puerto Rico
(Andersen-Puerto Rico)
33 W. Monroe Street
Chicago, IL 60603

ARTHUR ANDERSEN-Brazil
33 W. Monroe Street
Chicago, IL 60603


Adam R. Brebner